

## CHAPTER IIA

### GENERAL INSPECTION PROCEDURES

**A. Inspection Scope.** Inspections, either programmed or unprogrammed, may fall into one of two categories, depending on the scope of the inspection:

- 1. Comprehensive.** A comprehensive inspection is a substantially complete inspection of the potentially high hazard areas of the establishment. An inspection still may be considered comprehensive, even though, as a result of the professional judgment of the CSHO, not all potentially hazardous conditions, operations and practices within those areas are inspected.

A programmed public sector inspection is generally a comprehensive inspection of the worksite but may be limited, as necessary, in view of resources availability and other compliance priorities. (Low-hazard areas, such as office space, may be excluded from inspection without affecting the comprehensiveness of the inspection.)

- 2. Partial.** A partial inspection is one whose focus is limited to specific potentially hazardous areas, operations, conditions or practices at the establishment.

**a.** Every “partial” inspection, whether programmed or unprogrammed, shall include:

- (1)** The principal focus (e.g., imminent danger or complaint investigation);
- (2)** A review of injury and illness records;
- (3)** An assessment of the employer’s hazard communication, § 1910.1200, lockout/tagout programs, § 1910.147, confined space, § 1910.146, and bloodborne pathogens, § 1910.1030; and
- (4)** An evaluation of the employer’s safety and health management program. Follow-up inspections may be exempt from this rule.

**b.** The CSHO shall recommend whether the scope of the inspection should be expanded based on the investigation, and the Compliance Manager shall make the decision on expanding the scope of an inspection in accordance with the guidelines.

**A. 3. Expanding the Scope of the Inspection.** Programmed and unprogrammed inspections which were initiated as partial scope inspections may be expanded under any of the following circumstances which shall be documented in the case file:

- \* The establishment is listed on the current regional office safety or health inspection register and the deletion criteria here or in the Planning Guide for Programmed Inspections do not apply;
- \* A substantially complete inspection of a construction establishment has not been conducted within the preceding three (3) months;
- \* VOSH or OSHA inspection records or injury and illness records for the establishment or for the employer in the case of a mobile worksite, indicate a history of significant violation;
- \* The allegations providing the basis for the unprogrammed inspection indicate the existence of potential hazards which can be identified by expanding the inspection;
- \* For good cause as determined by the Compliance Manager (e.g., the establishment is not on the current regional office safety or health inspection register but the establishment or its SIC code is on the regional office safety or health high hazard establishment list or high hazard SIC code list);
- \* Partial inspections may be further expanded to cover serious hazardous conditions or potential violations observed in plain view and which were not part of the original inspection;
- \* Inspections may be expanded if numerous serious violations are found within the original scope of the inspection.

*NOTE: This method of expanding the scope does not entail expansion of the scope to comprehensive, but only to cover certain limited additional areas of the worksite which were identified as having hazardous conditions or potential violations in plain view.*

**B. Conduct of Inspection.**

*NOTE: CSHOs should be prepared to take photographs or to videotape, prior to entry on site, of any violations they see in plain view. See applicable sections for more information.*

The CSHO shall enter the establishment to be inspected with an attitude reflecting a professional, balanced, and thorough concern for safety and health.

- B.**
- 1. Time of Inspection.** Inspections shall be made during regular working hours of the establishment except for special circumstances indicating otherwise. Permission for entry during non-working hours should be sought from the Compliance Manager.
  - 2. Presenting Credentials.** At the beginning of the inspection, the CSHO shall attempt to locate the owner, operator or agent in charge at the workplace and present credentials. On construction sites, this will most often be the representative of the general contractor. In the following circumstances, the CSHO shall:
    - a.** When the person in charge is not present at the beginning of the inspection, identify the top management official. This person may be the foreman, lead man, gang boss or senior member of the crew.
    - b.** When neither the person in charge nor a management official is present, contact the employer and request the presence of the owner, operator or management official. The inspection shall not be delayed unreasonably to await the arrival of the employer representative. This delay shall not normally exceed one hour.
    - c.** If the person in charge at the workplace cannot be determined by a. or b. above, record the extent of the inquiry in the case file and proceed with the physical inspection after contacting the Compliance Manager. If the person in charge arrives during the inspection, an abbreviated opening conference shall be held, and the person shall be informed of the status of the inspection and included in the continued walkaround.
    - d.** On multi-employer sites, ask the superintendent, project manager or other representative of the general or prime contractor to identify the subcontractors or other contractors on the site, together with the names of the individuals in charge of their operations.
      - (1)** The CSHO shall then request that these individuals be contacted and asked to assemble in the general contractor's office or other suitable location, together with their employee representatives, if any.

- B.2.d.**
- (2) The inspection shall not be postponed or unreasonably delayed because of the unavailability of one or more representatives.
  - (3) If a Federal contracting agency representative is onsite, the general contractor shall be asked to contact the representative, advising him of the inspection and extending an invitation to attend the opening conference and to participate in the inspection.
- 3. Refusal to Permit Inspection.** Section 40.1-49.8, *Code of Virginia*, provides that CSHOs may enter without delay and at reasonable times any establishment covered under the law for the purpose of conducting an inspection. An employer has the constitutional right to require that the CSHO seek an inspection warrant prior to entering an establishment and may refuse entry without such a warrant.
- a. Refusal of Entry or Inspection.** The CSHO shall not engage in argument concerning refusal. When the employer refuses to permit entry upon being presented proper credentials or allows entry but then refuses to permit or hinders the inspection in some way, a tactful attempt shall be made to obtain as much information as possible about the establishment. (See appendix.)
- (1) If the employer refuses to allow an inspection of the establishment to proceed, the CSHO shall leave the premises and immediately report the refusal to the Compliance Manager who shall notify the Office of Legal Support Director.
  - (2) If the employer raises no objection to the inspection of certain portions of the workplace, but objects to inspection of other portions, the CSHO, after informing the Compliance Manager of the partial refusal, shall normally continue the inspection avoiding the portions of the workplace about which the employer has raised objections.

In either case the CSHO shall advise the employer that the refusal will be reported to the Compliance Manager and that the agency may take further action, including obtaining an administrative search warrant.
  - (3) The CSHO may answer reasonable questions presented by the employer; e.g., the scope of the inspection, purpose, anticipated length. The CSHO shall avoid giving any impression of unyielding insistence or intimidation concerning the right to inspect.

**B.3.a.**

- (4)** If the refusal of entry is made by a private contractor working on state property the CSHO shall immediately report the refusal to the Compliance Manager. The CSHO shall remain in the area of the site while the Compliance Manager contacts the Office of Legal Support Director to determine if consent to inspect the premises can be obtained within a reasonable length of time from the State as owner of the property. The Compliance Manager shall inform the CSHO as soon as possible whether or not permission may be received within a reasonable period of time.
- (5)** If the refusal of entry is made by a private contractor working on private property, the CSHO shall leave the premises and immediately report the refusal to the Compliance Manager. If the Compliance Manager believes the private owner may give permission to enter, he will inform the Regional Director, contact the Office of Legal Support Director, and then attempt to get the owner's consent to inspect.
- (6) Questionable Refusal.** When permission to enter or inspect is not clearly given, the CSHO shall make an effort to clarify the employer's intent.

  - (a)** If there is doubt as to whether the employer intends to permit an inspection, the CSHO shall not proceed but shall contact the Compliance Manager immediately.
  - (b)** When the employer hesitates or leaves for a period of time so that permission is not clearly given within one hour of initial entry, the CSHO shall contact the Compliance Manager, who shall decide whether or not permission is being refused.
  - (c)** When the employer's intent is clarified the CSHO shall either conduct the inspection or proceed as outlined.

- b. Employer Interference.** Where entry has been allowed but the employer interferes with or limits any important aspect of the inspection, the CSHO shall immediately contact the Compliance Manager for instructions on whether to consider this action as a refusal. Examples of interference are refusals to permit the walkaround, the examination of records, the taking of photographs and/or videotapes, the inspection of a

particular part of the premises, employee interviews, or the refusal to allow attachment of sampling devices. In cases of partial interference, the Compliance Manager may permit the inspection to continue without resorting to a warrant, if the refusal does not interfere with essential portions of the inspection.

- B.3. c. Use of Interrogatories.** Whenever there is a reasonable need for records, documents, testimony or other supporting evidence necessary for completing an inspection scheduled in accordance with any current and approved inspection scheduling system or an investigation of any matter properly falling within the statutory authority of the Department, the following procedures apply:

- (1)** If a CSHO seeking access to injury or illness records to review them for sufficiency is denied access to those records, the CSHO shall proceed as for any other case of refused entry.

*NOTE: An employer is required to keep illness and injury records by § 40.1-6, Code of Virginia, and § 60 of the Administrative Regulations Manual.*

- (2)** Upon receipt of notification of an employer's refusal to produce injury or illness records required by VOSH, the Compliance Manager shall notify the Office of Legal Support Director as soon as possible.
- (3)** The Office of Legal Support Director shall consult with the Assistant Attorney General to determine an appropriate course of action. Should the determination be to seek an inspection warrant under § 40.1-49.8 or to initiate legal proceedings under § 40.1-10, the Office of Legal Support Director shall request the Assistant Attorney General and the appropriate Commonwealth's Attorney to take steps to obtain the appropriate action through the circuit court.
- (4)** Should the determination be to seek action under § 40.1-6(4), the Office of Legal Support Director shall contact the Director of VOSH Programs and the Commissioner to begin the process of serving interrogatories.
- (5)** When proceeding under § 40.1-6(4) interrogatories may be served personally or by certified mail with return receipt requested.

**B.3.c.**

- (6) The person served may comply with the interrogatories by making his answers available immediately to the CSHO upon service. He may also comply by contacting the Compliance Manager and arranging for an acceptable method of delivery of the required information or by mailing the answers to the interrogatories to the Regional or Branch Office.
- (7) Compliance with the interrogatories must be within 30 days of the receipt of the interrogatories.
- (8) If the person who has been served answers the interrogatories, the inspection or other investigation shall proceed as usual.
- (9) If the person who has been served refuses to answer the interrogatories, the Compliance Manager shall proceed as usual for cases involving a refusal of entry and shall refer the matter to the Office of Legal Support Director for appropriate action.

**d. Getting an Inspection Warrant.** An inspection warrant will be obtained where a refusal of entry is total or partial.

- (1) If it is determined that a warrant will be sought, the Office of Legal Support Director shall proceed for warrant applications, according to guidelines and procedures established in §§ 40.1-49.9 through 40.1-49.12 of the *Code of Virginia*.
- (2) Within one working day after the determination is made that an inspection warrant is necessary, the CSHO shall complete the Refusal of Entry Form, and send it to the Compliance Manager who shall transmit it to the Office of Legal Support.

**e. Compulsory Process.** When a warrant is obtained requiring an employer to allow an inspection, the CSHO is authorized to conduct the inspection in accordance with the provisions of the warrant. All questions from the employer concerning reasonableness of any aspect of an inspection conducted pursuant to an inspection warrant shall be referred to the Compliance Manager.

- B.3.**
- f. Action to be taken upon receipt of an inspection warrant.** The inspection will normally begin within 24 hours of receipt of an inspection warrant or of the date authorized by the inspection warrant for the beginning of the inspection. Section 40.1-49.10, *Code of Virginia*, requires that warrants be executed within 15 days of their issuance.
- (1)** The CSHO shall serve a copy of the inspection warrant on the employer and make a separate notation as to the time, place, name and job title of the individual served.
  - (2)** The date of entry to inspect using the warrant shall be entered in the appropriate space on the inspection warrant. Upon completion of the inspection, the CSHO will complete the return of service on the original inspection warrant, sign and return it to the court.
  - (3)** To determine an appropriate course of action if physical resistance or interference by the employer is anticipated, the Compliance Manager shall consult with the Program Director who shall inform the Compliance Director and the Office of Legal Support Director.
- g. Refused Entry or Interference With an Inspection Warrant.** When an apparent refusal to permit entry or inspection is encountered upon presenting the inspection warrant, the CSHO shall specifically inquire whether the employer is refusing to comply with the inspection warrant.
- (1)** If the employer refuses to comply or if consent is not clearly given (e.g., the employer expresses an objection to the inspection), the CSHO shall not attempt to conduct the inspection but shall leave the premises and contact the Compliance Manager concerning further action. The CSHO shall make notations (including all possible witnesses to the refusal or interference) and fully report all relevant facts.
  - (2)** The Compliance Manager shall immediately inform the Regional Director of the refusal. The Compliance Manager shall consult with the Office of Legal Support Director.
  - (3) Reserved.**



- B.3.**
- h. Forcible Interference with Conduct of Inspection or Other Official Duties.** Section 40.1-10, *Code of Virginia*, makes it a criminal offense to obstruct, in any manner, a CSHO while engaged in the performance of his official duties.
  - i. Agency Response.** Whenever a CSHO or other VOSH employee encounters forcible resistance, opposition, interference, etc., or is assaulted or threatened with assault while engaged in the performance of official duties, all investigation activity shall cease. The Compliance Manager shall be advised as soon as possible and shall consult with the Program Director, and the Office of Legal Support Director to determine an appropriate course of action.
  - j. Types of Forcible Interference.** Although the employer is legally entitled to refuse permission to conduct an inspection without a warrant, the law does not permit forcible conduct against the CSHO. The following illustrates the type of forcible conduct which shall be reported to the Compliance Manager immediately:

    - (1)** Anyone physically holding, grabbing, pushing, shoving, or in any way limiting the CSHO's or other VOSH employee's freedom of action or choice of action. The threat of any action which limits freedom of action or choice of action is included.
    - (2)** Anyone striking, kicking, or in any way inflicting or attempting to inflict injury, pain or shock on the CSHO or other VOSH employee. The threat of such actions is included as is oral abuse which menaces or causes concern for the official's or employee's personal safety.
    - (3)** Anyone assaulting or threatening the CSHO or other VOSH employee with a weapon of any kind. The handling or display of weapons in a menacing manner is included.
- 4. Release for Entry.** The CSHO shall not sign any form or release or agree to any waiver. This includes any employer forms concerned with trade secret information.
- a.** If the employer requires that a form or release be signed or that the CSHO agree to a waiver before entering the establishment, the CSHO shall inform the employer of the Commissioner's authority under § 40.1-49.8,

*Code of Virginia.* If the employer still insists on the signing of a form or release, the CSHO shall suspend the inspection and report the matter promptly to the Compliance Manager who shall decide if the situation is to be treated as a refusal of entry.

- B.4.**
- b.** The CSHO may sign a visitor's register, plant pass, or any other book or form used by the establishment to control the entry and movement of persons upon its premises. Such signature shall not constitute any form of a release, waiver, prosecution or liability under the law.
  - c.** In case of any doubt, the CSHO shall consult with the Compliance Manager before signing any document.
- 5. Bankrupt or Out of Business.** If the establishment scheduled for inspection is found to have ceased business and there is no known successor, the CSHO shall report the facts to the Compliance Manager. If an employer, although adjudicated bankrupt, is continuing to operate on the date of the scheduled inspection, the inspection shall proceed. An employer must comply with the law until the day the business actually ceases to operate.
- 6. Strike or Labor Dispute.** Establishments may be inspected regardless of the existence of labor disputes involving work stoppages, strikes or picketing. If the CSHO identifies an unanticipated labor dispute at an inspection site, the Compliance Manager shall be consulted before any contact is made.
- a. Programmed Inspections.** As a rule, programmed inspections will be deferred during a strike or labor dispute, either between a recognized union and employer or between two unions competing for bargaining rights in the establishment.
  - b. Unprogrammed Inspections.** As a rule, unprogrammed inspections will be performed during strikes or labor disputes. However, the seriousness and reliability of any complaint shall be thoroughly investigated by the Compliance Manager prior to scheduling an inspection. If there is a picket line at the establishment, the CSHO shall inform the appropriate union official of the reason for the inspection prior to initiating the inspection.

*NOTE: This investigation will ensure, as far as possible, that the complaint reflects a good faith belief that a true hazard exists and is not merely an attempt to harass the employer or to gain a bargaining advantage for labor.*

- B. 7. Employee Participation.** As soon as possible after arrival at the worksite the CSHO shall determine whether the employees are represented. The employee representatives shall be offered the opportunity to participate in all phases of the inspection. If an employer interferes with participation by employee representatives and this cannot be resolved by the CSHO, continued interference by the employer shall be construed as a refusal to permit the inspection and the Compliance Manager shall be contacted in accordance with the guidelines.

**NOTE:** For the purpose of this manual, the term “employee representative” refers to (1) a representative of the certified or recognized bargaining agent, or, if none, (2) an employee member of a safety and health committee who has been chosen by the employees (employee committee members or employees at large) as their VOSH representative, or (3) an individual employee who has been selected as the walkaround representative by the employees of the establishment. Refer to the Administrative Regulations Manual.

- 8. Severe Weather Conditions.** If severe weather conditions encountered during an inspection cause workplace activities to shut down, the inspection shall be continued at a later time as soon as weather permits.
- a.** If work continues during adverse conditions but the CSHO decides that the weather interferes with the effectiveness of the inspection, it shall be terminated and continued when conditions improve.
  - b.** If work continues and the CSHO decides to continue the inspection in spite of bad weather, hazardous conditions created by the weather shall be noted since they may be the subject of later citation.
- 9. No Inspection.** If a scheduled inspection cannot be conducted, the CSHO shall document the reasons for not conducting the inspection. The case file shall include the names of persons contacted, if any.

- C. Opening Conference.** The CSHO shall inform the employer of the purpose of the inspection and shall obtain the employer’s consent to include participation of an employee representative, as defined, when appropriate. The opening conference shall be kept as brief as possible, normally no longer than one hour. Conditions of the worksite shall be noted upon arrival as well as any changes which may occur during the opening conference. Pursuant to § 240 of the *Administrative Regulations Manual*, the employer and the employee representatives shall be informed of the opportunity to participate in the physical inspection of the workplace.

*NOTE: An abbreviated opening conference shall be conducted whenever the CSHO believes that the circumstances at the worksite dictate that the walkaround begin as promptly as possible. In such cases the opening conference shall be limited to the bare essentials; identification, purpose of visit, and a request for employer and employee representatives. The other elements shall be fully addressed after completion of the walkaround or in the closing conference.*

- C. 1. Attendance At Opening Conference.** The CSHO shall conduct a joint opening conference or separate conferences as follows:
- a. Joint Conference.** Whenever possible, a joint opening conference shall be held with the employer and employee representative.
  - b. Separate Conferences.** Where either party chooses not to have a joint conference, separate conferences shall be held for the employer and employee representatives. A written summary of each conference shall be made and attached to the case file. A copy of the written summaries will be available from the Compliance Manager upon request by the employer or the employee representative.
- 2. Scope.** The CSHO shall outline in general terms the scope of the inspection, physical inspection of the workplace and records, possible referrals, discrimination complaints, and the closing conference(s). The CSHO shall also explain that previously issued citations, if any, will also be included as part of this inspection as a follow-up or to monitor abatement progress, if they have become a final order of the Commissioner.
- a. Purpose of the Inspection.** The employer shall be told the reason for the inspection as follows:
    - (1) Imminent Danger Situations.** When responding to an alleged imminent danger situation, the CSHO is required to get to the location of the alleged hazard(s) as quickly as possible. Under these circumstances, an expedited opening conference shall be conducted by limiting activities to presenting credentials and explaining the nature, scope, and purpose of the inspection.
      - (a)** Potential safety and health hazards that may be encountered during the inspection shall be identified and appropriate steps shall be taken to provide for personal protection.

**C.2.a.(1)**

- (b)** The presence of employer and employee representatives shall be requested; however, the inspection shall not be unreasonably delayed to await their arrival.
- (c)** The employer shall be told that, because of the shortened nature of the opening conference, there will be a more extensive discussion either after the walkaround or at the closing conference.
- (d)** Unreasonable delays shall be reported immediately to the Regional Director.

**(2) Fatality/Catastrophe Inspections.** The employer shall be informed that an investigation will be conducted and extensive interviews with witnesses will be necessary. The CSHO shall explain that the purpose of an accident investigation is to determine:

- (a)** The cause of the accident.
- (b)** Whether a violation of VOSH safety or health standards related to the accident occurred.
- (c)** What effect the standard violation had on the occurrence of the accident.

**(3) Complaint Inspections.** For a complaint inspection, the CSHO shall provide a copy of the complaint(s) to the employer and the employee representative at the beginning of the opening conference.

*NOTE: The CSHO shall insure that the employer does not discover the identity of the complainant. The Compliance Manager shall delete complainant's name before giving the complaint to the CSHO. In conversations with the employer, the CSHO shall be careful not to reveal any information which could lead to the identity of the complainant.*

**C.2.a.**

**(4) Referral Inspections.** During the opening conference of a

referral inspection, the CSHO shall inform the employer that the inspection is a result of a referral (e.g., from another agency, from a previous VOSH inspection or in response to specific evidence of probable violations at a worksite).

- (5) **Follow-up Inspections.** The CSHO shall explain that any item that had been previously cited will be evaluated for complete abatement of the hazard.
- (6) **Monitoring Inspections.** The CSHO shall review the cited items with the employer to determine the progress of abatement and explain to the employer the reason for the monitoring visit; e.g., request for modification of abatement date, corporate-wide settlement agreement, variance and multi-step abatement.
- (7) **Programmed Inspections.** The CSHO shall briefly explain the scheduling system used to select the establishment for inspection (e.g., Safety or Health General Schedule, Local Emphasis Program, etc.).

b. **Inspections with Potential Health/Chemical Hazards.** During a health inspection or, as appropriate, during a safety inspection when evaluating potential health/chemical hazards, the CSHO should use the following procedures in the opening conference:

- (1) Request process flow charts and plant layouts relevant to the inspection. If the plant layout process flow charts are not available, sketch a plant layout as necessary during the course of the initial walkaround, identifying the operations and the approximate dimensions of the work area. Distribution of major process equipment, including engineering controls in use, shall also be included on the sketch.
- (2) Make a brief examination of all workplace records pertinent to the inspection.
  - (a) If detailed review is necessary, the CSHO may wish to proceed with the initial walkaround and return later to examine the records more thoroughly.

**C.2.b.(2)**

- (b)** An examination of records, those required and other types, can provide many valuable insights (e.g., symptomatology which may relate to workplace exposure, frequency of injuries of illnesses, dermatitis, monitoring data, audiometric test results, ventilation tests, process flow charts and a list of hazardous raw, intermediate, and final product materials) to ensure a more effective inspection.
  - (c)** In some plants, sampling for obvious health hazards can be initiated soon after the opening conference. Details of the walkaround can be accomplished while collecting the samples.
- c. Records Review.** The CSHO shall cover the records review procedures and inform the employer that the inspection will include a review of the establishment's compliance with any applicable provisions of the Hazard Communication, Lockout/Tagout, Confined Space and Bloodborne Pathogens standards. The CSHO shall also explain that the calculation of the establishment's lost workday injury rate (LWDI) may be required. High hazard areas may thus be identified for inspection in this process and inspected accordingly.
- d. Handouts and Additional Items.** During the opening conference of every inspection, the CSHO, if needed, may provide the employer and employee representatives with copies of the VOSH poster and with blank OSHA-200 Forms, a copy of the standards as well as other applicable laws and regulations, and informational handouts and materials. The CSHO shall also inform the employer and employee representatives of procedures for obtaining additional copies of any materials of which the CSHO may not have a sufficient quantity on hand. The employee representatives shall be given an opportunity to read the brief introductory material before the inspection begins.
- e. Program Mix.** The CSHO shall briefly indicate that VOSH shares the employer's and employee's common goal of reducing workplace injuries and illnesses; that the agency is developing a variety of different cooperative approaches which are designed to assist the employer in achieving this goal; and that a more detailed discussion will take place during the closing conference.

**C. 3. Forms Completion.** The CSHO shall obtain available information for the VOSH-1 and other appropriate forms (and complete applicable sections during the opening conference).

**a.** Forms related to VOSH inspection activities shall be completed in accordance with instructions given in the IMIS Forms Manual or in the appendix of this chapter.

**(1)** Forms processed by IMIS are to be completed in accordance with the IMIS Forms Manual.

**(2)** Other forms related to VOSH inspection procedures shall be completed in accordance with the appendix to this chapter or with specific instructions given in other chapters of the FOM.

**b.** VOSH forms, whenever possible, shall be duplicates of Federal OSHA forms and shall have the same number as the corresponding OSHA form. For example, the VOSH-1 Form shall be the same as the OSHA-1 Form.

*NOTE: VOSH may continue to use either OSHA or VOSH forms until VOSH forms are printed or until the supply of forms is depleted.*

**4. Employees of Other Employers.** During the opening conference, the CSHO shall determine whether the employees of any other employers are working at the establishment.

**a.** If there are such employees and any questions arise as to whether their employers should be included in the inspection, the CSHO shall contact the Compliance Manager to determine whether additional inspections shall be conducted and what limitations there may be to such inspection activity.

**(1)** All high hazard employers potentially present at any scheduled worksite normally shall be included within the scope of the inspection, except as indicated in (2) and (3) below. For example, all construction contractors scheduled for inspection are to be included in the inspection assignment.

**(2)** When the referral criteria are met, a CSHO referral may be made and an inspection conducted under the guidelines for referrals.



- C.4.a.**
- (3)** When a construction operation is too large to be efficiently handled during the inspection of the programmed manufacturing establishment, the operation shall be treated as a referral for inspection at a later time, in accordance with referral inspections.
  - b.** If additional inspections are authorized, both employer and employee representatives of the other employers shall be invited to the opening conference. The inspection shall not be delayed to wait for these employer and employee representatives longer than would be reasonably necessary for either to arrive.
  - c.** If the site is a multi-employer site such as a construction site, the CSHO shall determine during the opening conference who is responsible for providing common services available to all employees on site; e.g., sanitation, temporary electricity, first aid, handrails, etc.

    - (1)** It shall be pointed out to all contractors that, apart from any arrangements that may have been made, each employer remains responsible for his or her own employees. The CSHO should request copies of any contractual arrangements concerning common services.
    - (2)** If it cannot be established which contractor is responsible for common services, the CSHO will determine which employer is the exposing, creating, or enforcing employer, whenever violations are noted.
- 

**5. Cooperative Programs.** Employers who participate in selected voluntary compliance programs may be exempted from programmed inspections. The CSHO shall determine, in accordance with the following guidelines, whether the employer falls under such an exemption during the opening conference.

- a. Section 21(d) and Contract Consultations.** The CSHO shall determine at the opening conference whether a VOSH consultation survey is in progress. (See Part 1908 regulations on consultation.)

  - (1)** Normally, an onsite consultation visit in progress has priority over programmed inspections, except as indicated in Part 1908.7(b)(2).

**C.5.a.(1)**

- (a)** For conditions covered by the employer's request for consultation, an onsite visit shall be considered in progress from the beginning of the opening conference through the end of any abatement period.
  - (b)** For conditions not covered by the employer's request, the onsite visit shall be considered in progress only while the consultant is at the place of employment.
- (2)** If a consultation visit is in progress, the following procedures shall be observed:

  - (a)** If the consultant is actually in the facility or has left the site but has not yet held a closing conference with the employer, the inspection shall be deferred until after the end of any abatement period.
  - (b)** Where the period between the consultation opening conference and the closing conference exceeds 30 days, the Compliance Manager may decide that the inspection shall proceed in the interest of timely assurance of worker protection. If, after conferring with the Manager of VOSH Consultation Services (or the Director of VOSH Cooperative Programs), it is agreed that the consultation is being conducted properly and at a reasonable pace, the inspection normally shall be deferred until after the end of any consultation abatement period. If no agreement can be reached, the Director of VOSH Programs will make the determination.
- (3)** If a follow-up inspection (including monitoring) or an imminent danger, fatality/catastrophe, complaint of referral investigation is to be conducted, the inspection shall not be deferred, but its scope shall be limited to those areas required to complete the purpose of the investigation. The CSHO shall also comply with the provisions for a partial inspection, except to the extent that those items are being addressed by the consultant. For example, if the consultant is working with the employer's hazard communication program, that program need not be reviewed by the CSHO.

  - (a)** For imminent danger, fatality/catastrophe or formal complaint investigations, the employer shall be advised that the consultant must stop the onsite visit until the compliance inspection has been completed.

**C.5.a.(3)**

- (b)** For CSHO referral or follow-up (including monitoring) inspections, the employer shall be advised that the consultant may either continue the onsite visit in areas of the facility not covered by the investigation or end the consultation visit until the compliance inspection has been completed.
- (4)** If the programmed inspection is scheduled for a multi-employer worksite such as a construction site, the following guidelines apply:

  - (a)** If the general contractor has invited the consultant on site, the consultant shall be considered onsite with respect to the entire worksite.
  - (b)** If the consultant has been invited by one of the subcontractors and the scope of the consultant's visit is limited to the operations of that one subcontractor, the inspection of the entire worksite shall not be deferred; the subcontractor who has invited the consultant to visit, however, shall be excluded from the scope of the inspection.
- (5)** If an employer refuses entry at the time of a compliance inspection, the Compliance Manager shall notify the Manager of VOSH Consultation Services of the refusal. He shall then request that no response to a consultation request be given until VOSH decides whether to seek a warrant. The Compliance Manager shall inform the Manager of VOSH Consultation Services as soon as possible after the resolution of the warrant issue so that a consultation visit may be conducted if the employer should request one. The Director of VOSH Programs may decide to allow a consultation visit to proceed in the interim, if that is judged to be in the best interest of employee safety and health.
- (6)** The employer has no obligation to inform the CSHO of a prior consultative visit. If, however, a copy of the consultant's report is provided and the CSHO finds serious hazards during the walkaround inspection that were previously identified by the consultant, a citation shall be issued for such violations, provided it is not within a consultation abatement schedule.

- C.5.      b.      **Voluntary Protection Programs (VPP)/Safety and Health Achievement Recognition Program (SHARP).** In the event that a CSHO enters a facility that has been approved for participation in a VPP (STAR, Merit) or SHARP and is currently under an inspection exemption, the approval letter shall be copied and the inspection either be terminated (if it is a programmed inspection) or limited to the specified items in the complaint or referral (if it is unprogrammed).
6.      **Walkaround Representatives.** Those representatives assigned to accompany the CSHO during the walkaround are designated walkaround representatives.
- a.      **Employer Representatives.** Anyone named by the employer as a representative is acceptable. In cases of isolated or remote locations, the senior supervisor, foreman, gang boss or head technician onsite at the time of inspection is the employer representative. Subject to the guidelines, every reasonable effort shall be made to afford general walkaround rights to every employer representative on a multi-employer worksite.
- b.      **Employee Representatives.** Subject to the guidelines, one or more employee representatives shall be given an opportunity to accompany the CSHO during the walkaround phase of the inspection in order to provide appropriate involvement of employees in the physical inspection of their own places of employment and to give them an opportunity to point out hazardous conditions. Section 240 of the *Administrative Regulations Manual* gives the CSHO authority to resolve disputes as to who represents the employer and employees for walkaround purposes. The following guidelines shall be used for determining employee representatives:
- c.      **Employees Represented by a Certified or Recognized Bargaining Agent.** During the opening conference, the highest ranking union official or union employee representative shall designate who will participate in the walkaround.
- d.      **Safety Committee.** The employee walkaround representative will be the person designated by the employee members of an established plant safety committee. (When authorized as employee representative for VOSH inspection purposes by the employees at large.)
- e.      **No Certified or Recognized Bargaining Agent.** Where employees are not represented by an authorized representative, where there is no established safety committee, and where employees have not chosen or

agreed to an employee representative for VOSH inspection purposes, whether or not there is a safety committee, the CSHO shall determine if any employee would suitably represent the interests of employees on the walkaround.

**C.6.e.**

- (1)** If selection of such an employee representative is impractical, the inspection shall be conducted without an accompanying employee representative and the CSHO shall consult with a reasonable number of employees during the walkaround, in accordance with the provisions of § 40.1-49.8 and § 40.1-51.2(d), *Code of Virginia*, and § 240 of the *Administrative Regulations Manual*.
- (2)** Employees selected for interviewing shall include individuals judged knowledgeable about the area or process being inspected.

**f. More Than One Representative.** At establishments where more than one employer is present or in situations where groups of employees have different representatives, it is acceptable to have a different employer/employee representative for different phases of the inspection. More than one employer or employee representative may accompany the CSHO throughout or during any phase of an inspection if the CSHO determines that such additional representatives will aid and not interfere with the inspection. See § 240 of the *Administrative Regulations Manual*.

- (1)** Whenever appropriate, in order to avoid a large group, the CSHO shall encourage multiple employers to agree upon and choose a limited number of representatives for walkaround accompaniment purposes. If necessary, during the inspection, employer representatives not on the walkaround shall be contacted to participate in different phases, as appropriate.
- (2)** As an alternative, the CSHO shall divide a multi-employer inspection into separate phases; e.g., excavation, steel erection, mechanical, electrical, etc., and encourage different employer representatives to participate in different phases, as appropriate.
- (3)** The same principles shall govern the selection of employee representatives when several are involved.

- C.6.**
- g. Labor Relations Disputes.** The CSHO shall not become involved in labor relations disputes either between a recognized union and the employer or between two or more unions competing for bargaining rights. However, if there is a recognized union, the highest ranking official available will designate the authorized walkaround representative despite the fact that another union may be seeking recognition.
  - h. Expired Collective Bargaining Agreement.** When a union contract has expired, the CSHO shall assume that the incumbent union remains as the bargaining agent unless that union is decertified, officially replaced, or has given up bargaining agent status.

- 7. Preemption by Another Agency.** Section 4(b)(1) of the OSHA Act states that the Act does not apply to working conditions over which Federal agencies, other than OSHA, exercise statutory responsibility. VOSH follows these jurisdictional guidelines (e.g., OSHA and VOSH do not have jurisdiction over mine safety and health).

At times, an inspection may have already begun when a Section 4(b)(1) question arises. In such cases, the CSHO shall interrupt the inspection and contact the Compliance Manager for guidance.

The determination of preemption by a Federal agency other than OSHA is in many cases a highly complex matter. To prevent, as much as possible, misunderstandings with other agencies and to avoid consequent adverse actions by employers (or agencies) the Compliance Manager shall observe the following guidelines whenever a possible preemption of jurisdiction question arises:

- a.** The Compliance Manager shall be alert to potential conflicts with other agencies at all times. If a question arises, usually upon receipt of a complaint, referral, or other inquiry, instructions adopted by VOSH from OSHA Directives System shall be consulted immediately to determine if the issue has been addressed in a Memorandum of Understanding or other agreement with the agency involved.
- b.** If there is no Memorandum of Understanding at the State or Federal level, the Compliance Manager shall be informed and will consult with the Program Director prior to contacting the Office of Legal Support. The Director of the Office of Legal Support shall provide clarification of the issue after consulting with the Assistant Attorney General, if appropriate.

- C.7.**
- c.** If the Office of Legal Support Director is unable to clarify the issue, it shall be referred to the OSHA Regional Office.
  - d.** At times, an inspection may already have begun when the Section 4(b)(1) question arises. In such cases the CSHO shall interrupt the inspection and contact the supervisor for guidance.
  - e.** If, following an inspection, there remains any doubt regarding VOSH coverage, the proposed citation and penalty shall be cleared with the Assistant Attorney General through the Office of Legal Support Director, and, if necessary, the OSHA Regional Office, prior to issuance.
  - f.** Once it is determined that VOSH does not have jurisdiction, the case shall be referred to the appropriate State or Federal agency if there is reason to believe that violations may exist.
- 8. Disruptive Conduct.** The CSHO may deny the right of accompaniment to any person whose conduct interferes with a full and orderly inspection, in accordance with § 240 of the *Administrative Regulations Manual*. If disruption or interference occurs, the CSHO shall use professional judgment as to whether to suspend the walkaround or take other action. The Compliance Manager shall be consulted if the walkaround is suspended. The employee representative shall be advised that, during the inspection, matters unrelated to the inspection shall not be discussed with employees.
- 9. Trade Secrets.** The CSHO shall find out from the employer if the employee representative is authorized to enter any trade secret area(s). If not, the CSHO shall consult with a reasonable number of employees who work in the area. (See § 250 of the *Administrative Regulations Manual*.)
- If trade secrets are identified, the CSHO will explain that VOSH is required by law to preserve the confidentiality of all information which might reveal a trade secret, in accordance with § 40.1-51.4:1 and § 250 of the *Administrative Regulations Manual*. (See other sections on Trade Secrets.)
- 10. Classified Areas.** In areas containing information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a CSHO. The CSHO must also have the proper security clearances to enter these areas.

- C. 11. **Examination of Record Programs and Posting Requirements.** Every inspection (including follow-ups) of an employer required to keep injury and illness records shall include an examination and verification of such records. If the records have been examined during the current calendar year by a CSHO of the same discipline, the CSHO need only review records since the last inspection. Examination of other records and of the posting requirements shall be performed to the degree judged necessary in light of the employer's past inspection history.

*NOTE: Exception--For partial inspections, whether programmed or unprogrammed, the CSHO may, but is not required to, include a review of the injury and illness records and an assessment of some or all of the employer's programs.*

*NOTE: For unprogrammed inspections (including follow-ups) at an establishment where a records review has already been performed during the current calendar year, the CSHO need only review the illness and injury records since the last inspection. The OSHA-200 data need not be entered on the VOSH-1 unless:*

- \* The OSHA-200 data was not available at the time of the last inspection but has now become available; or
- \* The calendar year has changed since the last inspection and new OSHA-200 data is available.

- a. **Records.** The CSHO shall comply with the records review procedures that follow for all inspections, programmed or unprogrammed, of employers required to keep the records in question. Findings shall be documented in the case file.

- (1) **Injury and Illness Records.** All injury and illness records required by law shall be examined.

*NOTE: The CSHO shall not request access to the Bureau of Labor Statistics survey questionnaire (OSHA-200s) or even ask if the employer has participated in the survey.*

- (2) **Hazard Communication.** For all safety and health inspections the CSHO shall determine if the employer is covered by the hazard communication standard. If so, the CSHO shall ensure that the applicable requirements program is effective.

- (3) **Confined Space.** For all safety and health inspections the CSHO shall determine if the employer is covered by the confined space



standard. If so, the CSHO shall ensure that the applicable requirements of the standard have been met and that the program is effective.

**C.11.a.**

**(4) Lockout/Tagout.** For all safety and health inspections the CSHO shall determine if the employer is covered by the lockout/tagout standard. If so, the CSHO shall ensure that the applicable requirements of the standard have been met and that the program is effective.

**(5) Access to Employee Exposure and Medical Records.** During all health inspections and safety inspections, designated by the Compliance Manager, the CSHO shall determine if applicable exposure and medical records are being maintained in accordance with the medical surveillance recordkeeping requirements of applicable standards or of § 1910.20. CSHO access to the employee medical records is authorized under § 60 of the *Administrative Regulations Manual* for the limited purpose of verifying employer compliance with those requirements.

*NOTE: Refer to the specific VOSH Program Directive on this subject.*

**(6) Other Records.** Any other records which fall within the scope of the inspection and which are related directly to the purpose of the inspection shall be examined. These may include, but are not limited to:

- (a)** Required certification records properly completed and any available equipment inspection and maintenance records;
- (b)** Medical surveillance or monitoring records, employee exposure records and other medical records not falling under any of these items above.
- (c)** Safety committee minutes, checklists, records of inspection conducted by plant safety and health committees, insurance companies, or consultants, if voluntarily supplied by the employer.
- (d)** Variance documentation.

- C.11.**
- b. Posting.** The CSHO shall determine if posting requirements are met in accordance with the *Administrative Regulations Manual* (§ 40). These include, but are not limited to:
    - (1)** VOSH poster informing employees of their rights and obligations under the law;
    - (2)** Log and summary of Occupational Injuries and Illnesses during the month of February;
    - (3)** Current citations, if any;
    - (4)** Requests for Modification of Abatement Date;
    - (5)** Variances;
  - c. Additional Information to Assist Inspection.** The CSHO shall also examine injury and illness records to assist in the walkaround portion of the inspection. The records shall be examined to find patterns of injuries and illnesses and to identify areas, departments or sections of the facility that have an unusual incidence of accidents.

**D. Walkaround Inspection.** The purpose of the walkaround is to identify potential safety and health hazards in the workplace. The CSHO shall conduct the inspection so as to eliminate unnecessary personal exposure to hazards and to minimize unavoidable personal exposure. When an apparent violation is observed by the CSHO prior to the walkaround, it shall be noted and photographed or videotaped, if possible. All such apparent violations shall be checked during the walkaround and cited, if appropriate. When possible, serious violations shall be checked and documented immediately at the commencement of the walkaround.

- 1. Evaluation and General Procedures.** It is essential during the walkaround portion of every inspection for the CSHO to:
  - a. Initial Walkaround.** Become familiar with site processes, collect information on hazards, observe employees' activities and interview them as appropriate. The initial walkaround shall survey existing engineering controls and, when appropriate, collect screening samples to determine the need for full-scale sampling.
    - (1)** If screening reveals potentially high exposure levels, a full shift sampling shall be conducted.

- D.1.a.**
- (2)** If screening samples must be sent to the laboratory for analysis, the employer shall be so informed.
  - (3)** If the laboratory results show that potentially high employee exposure levels exist, full-scale sampling of the potentially hazardous areas will be conducted.
  - (4)** If the results are negative, no full-scale sampling will be conducted.
- b. Employer's Safety and Health Program.** Evaluate the effectiveness of the employer's safety and health program (whether written or not) as follows:
- (1)** By finding out the degree to which the employer is aware of potential hazards present in the workplace and what methods he uses to control them;
    - (a)** What plans and schedules does the employer have to institute, upgrade and maintain engineering and administrative controls?
    - (b)** What is the employer's work practices program?
  - (2)** By determining employee knowledge of any hazards which exist in the establishment and the extent to which the employer's program covers the precautions to be taken by employees actually or potentially exposed to plant hazards; emergency procedures and inspection schedules for emergency personal protective equipment; the program for the selection, use and maintenance of routine personal protective equipment; and the overall quality and extent of the educational and training program and the degree of employee participation in it.
    - (a)** Compliance with the training requirements of any applicable safety or health standard shall be determined.
    - (b)** The following specific elements of the establishment safety and health program shall be evaluated in the detail appropriate to the circumstances of the inspection.

**D.1.b.(2)(b)**

- 1**     **Comprehensiveness.** Evaluate the degree to which the employer's safety and health program addresses the full range of hazards normally encountered in the employer's operations. This is an overall evaluation and shall take into account the evaluations of the remaining categories. Indicate whether the program is written.
- 2**     **Communication.** Evaluate the employees' awareness of and access to the safety and health program, taking into account the principal means by which the program is communicated to them (e.g., oral instructions, booklets, memorandums, posters, etc.). Consider whether safety meetings are held by the employer, their frequency and the persons conducting them (e.g., crew foreman, intermediate level supervisors, safety director, etc.). The effectiveness of these means shall be considered in the evaluation.
- 3**     **Compliance.** Evaluate the degree to which safety and health rules are actually enforced, taking into account the principal methods used (e.g., warnings, written reprimands, disciplinary action, discharge, etc.), and the effectiveness of these methods. Determine whether there is a staff (or one specific person) with assigned safety and health responsibilities and consider effectiveness of the staff's performance.
- 4**     **Safety/Health Training Program.** Evaluate separately any safety and health training programs the employer has. Factors to be considered include the need for special training in view of the hazards likely to be encountered or of specific requirements for such training and the need for ongoing or periodic training or retraining of employees. Determine how training and preparation is handled for non-routine tasks.

**D.1.b.(2)(b)**

- 5 Investigations.** Evaluate the employer's efforts to make accident/injury/illness investigations and indicate whether adequate corrective and preventive actions are taken as a result.

*NOTE: Review of this evaluation is done prior to citation issuance.*

- c. Determine compliance with specific performance standards that require emphasis** such as hazard communication, lockout/tagout, and bloodborne pathogens.
- d. Follow-up Previous Citations.** Identify locations and conditions that received citations during a previous inspection to ensure proper abatement or to determine abatement progress, if the citations are a final, unstayed order of the Commissioner. Follow-up and monitoring activities do not constitute a separate inspection when they are conducted as part of another investigation. No separate VOSH-1 should be submitted. Follow-ups will normally be conducted within three years.
- (1)** Record all facts pertinent to an apparent failure to abate, or repeated or willful violation on the appropriate compliance worksheets.
  - (2)** Determine if a letter of abatement previously received from the employer accurately described the correction of a previously cited violation.
  - (3)** Apparent violations shall be brought to the attention of employer and employee representatives at the time they are documented.

- 2. Record All Facts - Documentation of Safety and Health Violations.** To establish the existence of a VOSH violation, a CSHO must document four elements during an investigation. These elements are:

- \* A standard, regulation, or statute applies to the hazard in question;
- \* The employer has violated the standard, statute, or regulation in question;
- \* The employer has actual knowledge or should have known of the violative condition;

- \* An employee of the cited employer is exposed to the violative condition.

Record all facts pertinent to an apparent violation on the VOSH-1B or VOSH-1B(1H) compliance worksheets which are specifically designed to document each of the four elements. Apparent violations shall be brought to the attention of the employer and employee representatives at the time they are documented.

**D.2.**

- a. All notes, observations, analyses, and other information shall be either be recorded on the worksheet or attached to it.
  - (1) Because this document is required for each instance of an alleged violation, the CSHO shall use one worksheet to describe each instance as it is noted.
  - (2) If identical violations of the same standard or of several related standards are noted in one general location in the establishment and if the documentation is essentially the same, all of those violations may be treated as a single instance description and only one worksheet need be completed for that instance.
  - (3) Photographs, videotape, sketches, and descriptions that are attached to the worksheet are part of the inspection record and shall be noted on the form. The original field notes, as basic documentation of the violation, shall be attached to the worksheet and retained in the case file.
- b. The CSHO shall provide as much detailed information as practical to establish the specific characteristics of each violation as follows:
  - (1) Describe the observed hazardous conditions or practices to which employees have been exposed (i, e., the facts which constitute a hazardous condition, operation or practice and the essential facts as to how or why a standard is allegedly violated). Describe the type of accident which the violated standard was designed to prevent in this situation, or note the name and exposure level of any contaminant or harmful physical agent to which employees are, have been or could be exposed. If more than one type of accident or exposure could reasonably be predicted to occur, describe the one which would result in the most serious injury or illness. For the type of accident described include:

**D.2.b.(1)**

- (a) Severity of Hazard.** All factors about the violative condition which could significantly affect the nature and severity of the resulting injuries (e.g., “fall of 20 feet onto protruding rebar”; “fall into water-filled excavation”).
- (b) Probability of Injury or Illness.** Other factors playing a role in the probability that an injury could occur, such as:

  - \* Proximity of the workers to the point of danger of the operation.
  - \* Stress-producing characteristics of the operation (e.g., speed, heat, repetitiveness, noise, position of employee).
- (c) Identification Information.** The identification of the equipment and process which pose the hazards; i. e., serial numbers, equipment types, trade names, manufacturers, etc. Include a sketch when appropriate.
- (d) Location of Hazard.** The specific location of the violation; e.g.:

  - \* Building No. 3, second floor, column no. 6.
  - \* Machine Shop, NE corner, Department 12.
  - \* Foundry, NW corner, stakeout area.
- (e) Injury or Illness That Could Result From the Hazard.** State the nature of the more serious types of injury or illness which it is reasonably predictable and could result from the accident or health exposure.

  - \* Thus, the entry for the “fall from 20 feet (6 meters) onto protruding rebar” might read “death from multiple lacerations, puncture wounds and crushing injuries.” For exposure to asbestos, the entry might read “asbestosis, cancer and death.”

- \* Broad categories of injuries and health effects (such as “electric shock,” “burns,” or “lacerations”) shall be qualified to indicate whether the injuries or health effects are major or minor.
- \* In identifying the illnesses which a standard regulating exposure to an air contaminant or harmful physical agent is designed to prevent in a particular worksite, it may be necessary to consider not only the level of exposure but also the frequency and duration of exposure to the contaminant or agent.

**D.2.b.(1)**

- (f) **Probability and Severity Factors.** Evaluate the probability of the injury and explain the selection of probability and severity factors.
- (g) **Measurements and Sampling.** Any specific measurements taken during the inspection (e.g., “20 ft. (6 meters) distance from top of scaffold platform to ground level,” or “employee seated 2 ft. (60cm) from source of metal fumes”) which will further document the nature of the hazardous conditions and operations.
  - \* Describe how measurements were taken during the inspection.
  - \* Identify the measuring techniques and equipment used and those who were present; i., e., employee or employer representative who observed the measurements being taken.
  - \* Include calibration dates and description of calibration procedures used, if applicable.
- (h) **Employee Exposure.** Exposure facts so as to present a picture of employee exposure to the hazard for each particular occupation, including:
  - 1 The occupation and the employer of the exposed employees.



**D.2.b.(1)(h)**

- 2** The number of exposed employees in that occupation.
- 3** The length of time that the alleged violation has existed.
- 4** The duration and frequency that the employees are exposed (e.g., 2 hrs./wk.).
- 5** For contaminants and physical agents, any additional facts which clarify the nature of employee exposure.
- 6** The name, address (with zip code) and telephone number of at least one exposed employee in each (occupations). If photographs were not taken, signed and dated witness statements documenting the employee's exposure to the cited hazard shall be obtained.

***NOTE:** If the employees are unwilling to sign the witness statement request them to listen while you read it back to them, and ask them if the statement is accurate. Make any changes to assure accuracy, then make a note that they refused to sign but indicated that the statement was accurate.*

**EXAMPLE:** A radial arm saw has been on a construction site for 3 months and has never been guarded during that time. All of the employer's 14 carpenters on the job used the saw. One of the carpenters is John Doe. Total use of the saw on a daily basis is approximately 4 hours.

- (i) **Employer Knowledge.** Any facts which establish that the employer knew of the hazardous condition or could have known of that condition with the exercise of reasonable diligence. Enter any facts which show that:

- 1** The employer *actually knew* of the hazardous condition which constitutes the violation. In this

regard, a supervisor's supervisory knowledge amounts to employer knowledge. The CSHO shall obtain signed and dated witness statements from supervisory personnel to document employer knowledge of employee exposure to the hazard.

*NOTE: Every effort should be made to document actual employer knowledge of the hazard because a court of law may be reluctant to find employer knowledge from only a showing of reasonable diligence by VOSH.*

**D.2.b.(1)(i)**

**2**

The employer *could have known* of the hazardous condition if all reasonable steps had been taken to identify hazards to which employees may have been exposed. As a general rule, the CSHO can presume that the employer could have discovered the condition through the exercise of reasonable diligence. *Using reasonable diligence to show employer knowledge should be a last resort.* Obtaining statements from supervisory personnel is the preferred method of documenting employer knowledge.

*NOTE:* If the CSHO has reason to believe that the violation may be a willful violation, facts shall be included to show that the employer knew that, by law, he had to do something to abate the hazard (e.g., the employer was previously cited for some condition; a CSHO had already told the employer about the requirement; knowledge of the requirement was brought to the employer's attention by an employee safety committee, etc.). Facts shall be included showing that, even if there was no conscious violation of the law, the employer was aware that the condition existed and made no reasonable effort to eliminate it.

**3**

Any facts or employer statements which show the employer had knowledge of the standard or regulation shall also be documented.

**D.2.b.(1)**

**(j)** Any pertinent employer or employee remarks made during the walkaround or the closing conference, especially comments directly related to the instance described shall be documented.

**1** Employer/supervisory personnel comments which may be characterized as admissions of the specific violations described are to be included.

*NOTE: Every attempt should be made to document such comments through witness statements, signed and dated by the employer/supervisor.*

**2** Any other facts which may assist in evaluating the situation or in reconstructing the total picture in preparation for testimony in possible legal actions shall be included.

**3** Any additional comments (by the CSHO), particularly any explanation of abatement dates when necessary shall be included (e.g., when longer than 5 days for a serious violation or when an abatement period exceeding 30 days is recommended for an item).

**(2)** If an employee exposure (either to safety or health hazards) is not observed facts on which the determination is made that an employee has been or could be exposed must be stated. To document past exposure, a signed, and dated employee or employer/supervisor witness statement shall be obtained which documents the exposure.

**(3)** Where applicable, what the employer could have or should have done to be in compliance shall be stated.

**(4)** When violations are grouped, the reason for grouping is to be described.

**(5)** When a specific type of hazard exposure is caused by the combination of violations, sufficient detail should be used to describe it.

- (6) If the exposing employer neither created nor controlled the violative condition, the name and relationship of the responsible party shall be stated; e.g., prime contractor, electrical subcontractor, building owner or equipment lessor. Any steps taken by the exposing employer to correct the condition are to be described.

**D.2. c. Health Inspections.** There are special documentation requirements for health inspections. During such inspections, the CSHO shall:

- (1) **Relevant Information.** All relevant information must be recorded concerning potential exposure to chemical substances or physical hazards such as symptomatology, duration and frequency of the hazard, pertinent employee comments, sources of potential health hazards, locations of employees pertinent to the inspection, types of engineering controls, use of personal protective devices including respirators, ear and eye protection, clothing, etc. Material Safety Data Sheets where available and relevant must be collected.
- (2) **Employee activities.** Employee activities throughout the establishment should be observed, concentrating particularly on potentially hazardous areas, and
  - (a) Numbers of employees shall be estimated at each operation to be evaluated, indicating whether they are engaged in stationary or transient activities.
  - (b) Employees shall be interviewed.
  - (c) Supervisory personnel shall be interviewed.
  - (d) The duration and frequency of cyclic work processes shall be recorded, describing potential exposures during each phase of the cycle.
- (3) Information shall be requested and evaluated on the following aspects of the employer's occupational safety and health program. Findings shall be discussed in detail at the closing conference.
  - (a) **Monitoring.** The employer's program for monitoring safety and health hazards in the establishment should include a program for self-inspection. The CSHO shall discuss the employer's maintenance schedules and inspection records.

Additional information shall be obtained concerning employer activities such as sampling and calibration procedures, ventilation measurements, preventive maintenance programs for engineering controls, laboratory services, use of industrial hygienists and accredited laboratories. Compliance with monitoring requirements of any applicable standard shall be determined.

**D.2.c.(3)**

- (b) Medical.** The CSHO shall determine whether the employer provides the employees with preplacement and periodic medical examinations
- (c) Recordkeeping.** The CSHO shall determine the extent of the employer's recordkeeping program. This is not to be limited to VOSH-required records, but shall be extended to information falling within the scope of the inspection such as:

  - 1** If records pertaining to employee exposure and medical records are being preserved in accordance with § 1910.20, and
  - 2** Where a specific standard has provisions for employee access to the records, whether the results of environmental measurements and medical examinations are accessible to the affected employees.
- (d) Compliance.** The employer's compliance program may include engineering, work practice and administrative controls and the use of personal protective equipment. The CSHO shall identify as follows:

  - 1 Engineering Controls.** Pertinent engineering controls consist of substitution, isolation, ventilation and equipment modification.
  - 2 Work Practice and Administrative Controls.** These control techniques include personal hygiene, housekeeping practices and rotation of employees.

**D.2.c.(3)(d)(2)**

- \_\_\_\_\_ **a**      There should be a program of employee training and education to utilize work practice controls effectively. Where pertinent, the CSHO shall obtain a detailed description of such controls.
- \_\_\_\_\_ **b**      The CSHO shall evaluate the overall effect of such practices and programs, considering the employees' knowledge of their exposure.
- \_\_\_\_\_ **c**      Rotation of employees as an administrative control requires employer knowledge of the extent and duration of exposure.

**3      Personal Protective Equipment.** An effective personal protective equipment program should exist in the plant. A detailed evaluation of the program shall be made to determine compliance with the specific standards which require the use of protective equipment (e.g., §§ 1910.95, 1910.132, 1910.134).

**(e)      Regulated Areas.** The CSHO shall investigate compliance with the requirements for regulated areas as specified by certain standards.

- \_\_\_\_\_ **1**      Regulated areas must be clearly identified and known to all appropriate employees.
- \_\_\_\_\_ **2**      The regulated area designations must be maintained according to the prescribed criteria of the applicable standard.

**(f)      Emergency Procedures.** The CSHO shall evaluate the employer's emergency program.

- 1**      When standards, e.g., § 1910.120, provide that specific emergency procedures be developed where certain hazardous substances are handled, the evaluation shall determine if:

  - a**      Potential emergency conditions are included in the written plan;

**D.2.c.(3)(f)1**

**b** Emergency conditions have been explained to employees;

**c** There is a training scheme for the protection of affected employees including use and maintenance of personal protective equipment.

**2** Where hazardous substances are handled for which there are no standards requiring emergency procedures, the CSHO shall, nevertheless, determine whether such procedures have been established.

**3. Collecting Samples.** The CSHO shall determine as soon as possible after the start of the inspection whether sampling is required by utilizing the information collected during the walkaround and from the preinspection review.

**a. Sampling Strategy.**

**(1)** If sampling is necessary, a sampling strategy shall be developed by considering potential chemical and physical hazards, number of samples to be taken, and the operations and locations to be sampled.

**(2)** There shall be no undue delay between development of the sampling strategy and the actual sampling or between receipt of the results of spot or screen sampling and full-shift sampling, when the results indicate it is necessary.

**b. Sampling on Non-Standard Work Schedules.** When work schedules other than the usual 8-hour day are encountered (e.g., four 10-hour days per week), the following procedures shall be used when the standard itself does not cover such exposures:

**(1)** Sampling for 8-hour exposure levels shall be performed as usual; separate sampling shall be conducted to determine any additional exposure beyond the 8 hours.

**(2)** The results from the 8-hour sampling shall be compared to the Permissible Exposure Level (PEL) to determine whether an overexposure exists.

- D.3.b.**
- (3)** If it appears that the 8-hour exposure limits do not provide adequate protection from health hazards when longer workday schedules are used, the CSHO shall notify the Compliance Manager. In such cases, Compliance Manager shall contact the Health Program Director for assistance in determining appropriate sampling procedures and in evaluating the resulting data.
  - (4)** No citation shall be issued for exposures over 8 hours when the 8-hour exposure level is below the PEL without explicit approval of the Compliance Manager.
  - c.** If either the employer or the employee representative requests the results of sampling, summaries shall be provided to the requesting representative as soon as possible after consultation with the Compliance Manager.

**4. Taking Videotapes and/or Photographs/Tape Recordings:** Videotapes or photographs shall be taken to document unsafe physical conditions or violations in **all inspections**. Both videotapes and photographs shall be used in **fatality/catastrophe inspections**.

*NOTE: CSHOs should take or videotape or photographs of any violations they see in plain view prior to entry on site.*

- a.** Panoramic videos should be taken in certain situations, such as on construction sites (for example, exterior shots of the lack of perimeter guarding) and general industry settings when a large operation or piece of machinery is involved.
- b.** The CSHO should be careful to assure that the proper camera angle is being used to document the specific hazard (e.g., to document an excavation violation for no shoring or sloping, a video of an excavation taken at right angles to the line of the trench would document the absence of shoring but would not provide a clear picture of the failure to slope. A picture should be taken down the line of the trench to document the failure to trench).
- c.** Videotapes shall be labeled with the Inspection #, CSHO ID and section on videotape used. (Videotapes may be used for several inspections.) Videotapes shall be used during case file review and informal conferences without the need for video prints to be included in the case file. **Only** in contested and fatality/catastrophe cases are properly labeled video prints and/or photographs to be included on individual VOSH-1B's.



- D.4.**      **d.**      Original 8mm videotapes will be kept in the regional office. When a contested or fatality/catastrophe case file is sent to the central office for review, a VHS version of the original 8mm videotape will accompany the file along with any 35mm negatives.

*NOTE: The CSHO shall ensure that using flash or spark-producing equipment will not be hazardous and that employees are not unexpectedly startled by the use of flash equipment. Any individual whose words may be recorded shall be advised of the fact that videotape recordings also capture sound.*

- e.**      **Use of Tape Recorders.** The use of tape recorders during an inspection may inhibit the free exchange of information, and care shall be exercised in their use.

- (1)**      The use of tape recorders by the employer is at the discretion of the employer.
- (2)**      Tape recorders may be used by the CSHO during an inspection to preserve employer and employee statements during the conferences and interviews and as a note taking device during the walkaround.
  - (a)**      The CSHO shall explain that the tape recorder is being used to speed up the inspection process by eliminating much of the required note taking and that the tape recording will better preserve what actually occurred during the inspection.
  - (b)**      The tape recorder shall not be used in locations where it may be hazardous.
  - (c)**      If the employer, employer representative, affected employees, or any other witnesses object to recording their statements during any part of the investigation, that part of the inspection shall be continued without the tape recorder.

- 5.**      **Employee/Employer/Supervisory Interviews.** A free and open exchange of information between the CSHO and employees is essential to an effective inspection. Interviews provide an opportunity for employees or other individuals to point out hazardous conditions and, in general, to provide assistance as to what violations of the law may exist and what abatement action should be taken.

***NOTE:** Since supervisory personnel are considered employees for purposes of VOSH law, the rights, policies and procedures discussed below also apply equally to supervisory personnel and other employees. Most of the procedures also apply to interviews of owners, corporate officers, partners, plant managers, etc. which should also be documented by a written and signed statement. The main purpose of written statements of supervisory and upper level management personnel is to establish employer knowledge of VOSH violations.*

- D.5.**
- a. Purpose.** Section 40.1-49.8(2), *Code of Virginia*, authorizes the CSHO to question any employee privately during regular working hours in the course of a VOSH inspection. The purpose of such interviews is to obtain the information necessary to carry out the inspection effectively. Such interviews, however, shall be conducted within reasonable limits and in a reasonable manner, and shall be kept as brief as possible. Individual interviews are authorized even when there is an employee representative.
  - b. Employee Right to Complain.** Even when employees are represented on the walkaround, the CSHO may consult with any employee who desires to discuss a possible violation. Upon receipt of such information, the CSHO shall investigate the alleged violation, where possible, and record the findings.
    - (1)** Section 100 of the *Administrative Regulations Manual* affords any employee an opportunity to bring any condition believed to violate a standard or § 40.1-51.1, *Code of Virginia*, to the attention of the CSHO during an inspection.
    - (2)** In certain instances, the employer or the employee walkaround representative may not be able to provide all the necessary information regarding an accident or possible violation. The CSHO shall consult with employees while conducting the walkaround inspection and shall arrange for interviews, where these are considered useful, with employees who may have knowledge of pertinent facts.
  - c. Time and Location.** Interviews will normally be conducted during the walkaround; however, they may be conducted at any time during an inspection.
    - (1) Workplace.** If requested by the employee and considered necessary by the CSHO, a continued interview shall be scheduled at a mutually convenient time with preference being given to employee breaks or off-time. In retail or service establishments, or

in continuous production operations (e.g., assembly line), interviews shall be scheduled, when possible, to afford minimum interference with the employee's duties and the employer's business operation.

**D.5.c.**

**(2) Other Than Workplace.** Interviews may be held at the employee's home, the VOSH Regional or Branch Office, or any other suitable place in the community where privacy can be maintained.

**d. Privacy.** Every reasonable effort shall be made to conduct interviews with employees in private. If, at the time of the interview, reasonable privacy can not be assured, employees shall be asked if they desire that the interview be in private at another time or location. Whenever an employee expresses a preference that an interview be held in private, the CSHO shall make a reasonable effort to honor that request. Any employer objection to private interviews by CSHOs and employees shall be construed as a *refusal of entry* and handled in accordance with procedures concerning refusal to permit inspection.

*NOTE: "In private" refers to the exclusion of the employer and employee representative, unless the employee expresses a desire to be interviewed with the employee representative present.*

**e. Interview Statements.** Interview statements shall be obtained whenever the CSHO determines that such statements would be useful in documenting adequately an apparent violation or complaint.

The CSHO shall assure the employee that the Commissioner will not release the statement to anyone unless VOSH is compelled by a court to do so.

**(1)** Interviews shall normally be converted to writing and the individual shall be encouraged to sign and date the statement. Following are some examples of situations where the CSHO shall normally obtain written statements:

- (a)** When there is an actual or potential controversy between the employer and employee regarding a material fact concerning a violation;
- (b)** When there is a conflict or difference among employee statements regarding the facts;

**D.5.e.(1)**

- (c)** When there is a potential willful, serious or repeated violation.
  - (d)** In accident investigations, when attempting to determine if apparent violation(s) existed at the time of the accident.
  - (e)** To document employer knowledge of the violation.
  - (f)** To document whether training requirements under a specific standard have been met.
  - (g)** When the CSHO suspects the employer may raise an affirmative defense to the violation, such as employee misconduct.
  - (h)** When there is a multi-employer question as to which employer created the hazard and which employer had control of the workplace.
- (2)** Interview statements shall normally be written in the first person and in the language of the employee. They shall be written in ink or typewritten (not in pencil). The wording of the statement shall be understandable to the employee and reflect only what has been brought out in the interview.
- (a)** Any changes or corrections shall be initialed by the employee; otherwise, the statement shall not be added to or altered in any way.
  - (b)** The statements shall end with wording such as: “I have read the above, and it is true to the best of my knowledge.” The statement shall also include the following: “I request that my statement be held confidential to the extent allowed by law.” The individual, however, may waive confidentiality. The individual shall sign and date the statement, and the CSHO shall then sign it as a witness.
  - (c)** If the individual refuses to sign the statement, the CSHO shall note such refusal on the statement. The statement shall be read to the individual and the individual asked if the statement is accurate. Any necessary changes should then be made and initialed by the CSHO to ensure

accuracy. If, after that, the individual still will not sign, a note should then be added to the statement that the individual refused to sign but indicated the statement was accurate.

- D.5.e.**                    **(3)**    If the employee interview has been recorded, the conversation shall be transcribed; the transcription shall meet the requirements.

**6.    Employer Abatement Assistance.**

- a.    Policy.** CSHOs shall offer appropriate abatement advice during the walkaround as to how workplace hazards might be eliminated. The information shall provide guidance to the employer in developing acceptable abatement methods or in seeking appropriate professional assistance.
- b.    Type of Assistance.** The type of abatement assistance provided will depend on the needs of the employer and the complexity of the hazard. Where standards specify abatement methods such as guarding of belts and pulleys, the CSHO shall, at a minimum, ensure that the employer is aware of the specifications. For more complex problems, the CSHO shall offer general information on types of controls or procedures commonly used to abate the hazard. Alternative methods shall be provided whenever possible.
- c.    Disclaimers.** The employer shall be informed that:
  - (1)**    The employer is not limited to the abatement methods suggested by VOSH;
  - (2)**    The methods explained are general and may not be effective in all cases; and
  - (3)**    The employer is responsible for selecting and carrying out an effective abatement method.
- d.    Procedures.** Information provided by VOSH to assist the employer in identifying possible methods of abatement for alleged violations shall be provided to the employer as it becomes available or necessary. The issuance of citations shall not be delayed.

**D.6.d.**

- (1) Assistance Provided During An Inspection.** CSHOs shall utilize their knowledge and professional experience in providing the employer with abatement assistance during the inspection.

  - (a)** Before leaving an inspection site and, preferably, during the walkaround when an apparent violation is noted, CSHOs shall determine whether the employer wishes to discuss possible means of abating apparent violations. The discussion may continue at the closing conference.
  - (b)** CSHOs shall briefly document abatement information provided to the employer or the employer's negative response to the offer of assistance on the appropriate VOSH-1B Form.
- (2) Assistance Provided After An Inspection.** If a CSHO cannot provide assistance during an inspection or if the employer has abatement questions after the inspection, the Compliance Manager shall ensure that additional information, if available, is obtained and provided to the employer as soon as possible. Any communications with the employer shall be documented in the case file and the case diary log.

**7. Special Circumstances.**

- a. Trade Secrets.** Trade secrets are matter's that are not of public or general knowledge. A trade secret is any confidential formula, pattern, process, equipment, list, blueprint, device or compilation of information used in the employer's business which gives an advantage over competitors who do not know of it or use it.

  - (1) Policy/Procedures.** It is essential to the effective compliance of the law that the CSHO and all VOSH personnel preserve the confidentiality of all information and investigations which might reveal a trade secret. If the employer identifies an operation or condition as a trade secret during the inspection, the CSHO will ask the employer about the basis for it.
  - (2) Restrictions and Controls.** When the employer identifies an operation or condition as a trade secret, it shall be treated as such. Information obtained in such areas, including all negatives, photographs and VOSH documentation forms, shall be labeled "Confidential--Trade Secret." Trade secret information shall be

kept in a separate envelope and placed in a locked file cabinet. The CSHO or other VOSH employee shall only remove the trade secret envelope from the locked file cabinet when actually working on the file. Trade secret information shall in no event be left unattended. The envelope must be in the employee's possession or in the locked cabinet or a locked office. Once the case is closed the information may be returned to the company and a note put in the file where the trade secret information is located.

**D.7.a.(2)**

- (a) Under § 40.1-51.4:1, *Code of Virginia*, all information reported to or obtained by a CSHO in connection with any inspection or other activity, which contains or which might reveal a trade secret, shall be kept confidential. Such information shall not be disclosed except to other VOSH officials concerned with the compliance of the law or, when relevant, any proceeding under the law.
  - (b) Section 40.1-51.4:1, *Code of Virginia*, requires that information identified by an employer as containing trade secrets be kept confidential. This statutory mandate applies to all State employees. Disclosure of such information violates State Employees Standards of Conduct.
- (3) **Photographs or Videotape.** If the employer objects to the taking of photographs or videotape because trade secrets would or may be disclosed, the CSHO should advise the employer of the protection against such disclosure afforded by § 40.1-51.4:1, *Code of Virginia* and § 250 of the *Administrative Regulations Manual*. If the employer still objects, the CSHO shall contact the Compliance Manager.
- b. **Violations of Other Laws.** If a CSHO observes apparent violations of laws enforced by other government agencies, he will inform the Compliance Manager who shall make the appropriate referral. The Compliance Manager shall notify the Regional Director who shall inform the Director of VOSH Programs.
- c. **Areas Requiring Immunization.** If a nonimmunized CSHO encounters an area requiring immunization, the CSHO shall not enter that area but shall note a description of the area, the immunization required, the employees exposed, the location and other pertinent information in the case file.

**D.7.c.**

- (1) Nonimmunized CSHO.** The CSHO shall consult with the Compliance Manager about scheduling a properly immunized CSHO for an immediate or later inspection, as applicable. The CSHO shall then complete the inspection of all other areas of the establishment.
- (2) Nonimmunized Walkaround Representative.** If, during an inspection, a properly immunized CSHO finds that walkaround representatives of employers and employees are not properly immunized and, therefore, not authorized in the area, a reasonable number of employees and the supervisor of that area shall be consulted concerning workplace health and safety.

**d. Seizure of Evidence.**

- (1) General.** Occasionally, VOSH is required to take evidence during an investigation. Evidence range from documentary evidence, such as drawings or pictures taken by the employer, to physical evidence, such as extension cords or compressors. Our need for such items range from testing to preservation of the items for trial. The following procedures will govern our handling of such items.
- (2) Documentary Evidence.** Documentary evidence will be kept by VOSH until the case file is closed. If the employer makes a written request for return of the evidence VOSH will return the evidence after making a copy for the file.
- (3) Physical Evidence.** Physical evidence will be kept by VOSH while the case is open. When the case is closed, VOSH can return the item and obtain a written receipt from the individual receiving the item. The receipt shall contain the following minimum information: (1) a description of the item returned, (2) the signature and title of the person receiving the item, (3) the date, (4) the signature and title of the VOSH employee returning the item, and (5) the inspection name and inspection number.
  - (a)** If the employer requests the return of the physical evidence before the case file is closed, the Program Director may authorize the return of the item, after consultation with the Office of Legal Support, if it is not important to the case.



**D.7.d.(3)**

- (b) If an employer refuses to provide or give access to items needed as physical evidence, the CSHO shall follow the refusal of entry procedures contained in section B.3.g. of this Chapter. If local or State Police are on site, the CSHO may request their assistance in obtaining physical evidence.

- (4) **Testing of Physical Evidence.** When some piece of physical evidence requires testing, the Compliance Manager shall contact the Program Director who, in consultation with the Office of Legal Support Director, shall make arrangements to ensure proper testing procedures and chain of custody.

- E. Closing Conference.** At the conclusion of an inspection, the CSHO shall conduct a closing conference with the employer and the employee representatives. (On multi-employer worksites, the CSHO shall decide whether separate closing conferences will be held with each employer representative.) A joint closing conference shall be held with the employer and the employee representatives, whenever possible. When either party wishes to have a separate conference or when it is not practical to hold a joint closing conference, separate closing conferences shall be held. It is up to the discretion of the CSHO as to whether the employer or employee representative conference shall be held first. A written summary of each conference shall be included in the case file. A copy of the written summaries will be available from the Compliance Manager upon request by the employer or the employee representatives.

*NOTE: The closing conference can be used to gather additional information or documentation on employer knowledge of violations and to close other gaps in the case file.*

- 1. General Procedures.** The CSHO shall describe the apparent violations found during the inspection and indicate the applicable section(s) of standards which may have been violated. When describing the apparent violation, no mention shall be made of the potential classification or penalty. Copies of the standards shall be given to both the employer and the employee representatives (if not already given during the opening conference). During the closing conference, both the employer and employee representatives shall be advised of their rights to participate in any subsequent conferences, meetings or discussions.
- a.** If the CSHO does not have sampling results prior to the first closing conference, a second closing conference shall be held by telephone or in person to inform the employer and the employee representatives whether the establishment is in compliance.

- E.1.a.**
- (1)** If the results indicate noncompliance, then apparent violations, correction procedures, and interim methods of control shall be discussed.
    - (2)** Even if the employer is in compliance, sample results which equal or exceed 50 per cent of the permissible exposure limit and any recommendations of the CSHO on good safety and health practices shall be discussed with the employer and the employee representatives.
  - b.** When closing conferences are delayed pending receipt of sampling data or for any other reason, the employee representative shall be afforded an opportunity to participate in such delayed conferences.
  - c.** The strengths and weaknesses of the employer's occupational safety and health program shall be discussed at the closing conference.
  - d.** During the discussion of apparent violations, the CSHO shall note any comments on the VOSH-1B and obtain input for establishing correction dates.
  - e.** The CSHO shall advise the employee representatives that:
    - (1)** Under § 40.1-49.4.E, *Code of Virginia*, if the employer contests, the employees have a right to elect "party status" before the Court.
    - (2)** They must be notified by the employer if a notice of contest is filed.
    - (3)** They have rights under § 40.1-51.2:2, *Code of Virginia*, dealing with discrimination.
    - (4)** They have a right to contest the abatement date. Such contest must be in writing and must be filed within 15 working days after receipt of the citation.
- 2. Specific Instructions.** During the closing conference, the CSHO shall give the employer the VOSH publication, "Closing Conference Guide," which explains the responsibilities and courses of action available to the employer if a citation is received. The CSHO shall then briefly discuss the information in the booklet and answer any questions. All matters discussed during the closing conference shall be documented in the case file, including a note describing any printed materials that have been distributed.

- E.2.**      **a.**      **Citation Issued.** If citations are issued, the original shall be sent to the employer representative at the establishment. In the case of a non-fixed worksite, the original shall normally be sent to the worksite and a copy sent to the employer's headquarters. If it is clear that the employer representative at the worksite does not receive mail deliveries or will not be at the site at the time of delivery, the circumstances shall be documented in the case file and the original shall be sent to the location designated as most appropriate by the employer representative at the site. In addition, copies shall be sent to any other employer representatives as requested by the attending employer representative. When citations are not accepted by mail, they shall be hand delivered, delivered to the registered agent if one exists (check with the State Corporation Commission), or delivered to the Secretary of the Commonwealth, if the employer is out-of-state.

*NOTE: The original citation shall be sent by certified mail, return receipt requested.*

- E.2.a.**      **(1)**      The VOSH publication, "Employer Rights and Responsibilities" shall also be provided with each copy of the citation, and the employer shall be urged to read both the citation and the publication carefully. If the employer has any questions regarding a citation, the employer may contact the Compliance Manager at the address on the citation.
- (2)**      Letters informing the employer of the right to an informal conference and of the requirement that any Notice of Intent to Contest must be in writing shall be sent with each copy of the citation.
- b.**      **Computation of Time.** The employer must file a notice of contest within 15 working days from receipt of the citation(s). See § 40.1-49.4.B, *Code of Virginia*. The computation of time for the purpose of filing a notice of contest begins the day after the employer receives the citation (see green card to determine date of receipt). Therefore, the date of receipt is not included when calculating the 15-working day period. See § 1-13.3, *Code of Virginia*.

Any questions concerning this issue should be directed to the Office of Legal Support for guidance.

**c. E.2.**

**Citation Posting.** The citation, or a copy of it, must be posted at or near the place where each violation occurred in order to inform the employees of hazards to which they may be exposed. If, because of the nature of the employer's operation, it is not practical to post the citation at or near the place where each violation occurred, the citation must be posted in a prominent place where it can be seen by all affected employees. The citation must remain posted for three (3) working days or until the violation is corrected, whichever is longer.

- (1) If the citation is amended as a result of an informal conference or other procedure, a copy of the amended citation must be posted along with a copy of the original citation.
- (2) Even if contested, a copy of the citation must still be posted.
- (3) If there is an authorized employer representative at the establishment, copies of the original citation and any subsequent citation amendments shall be sent to that representative as soon as possible after receipt of these documents by the employer. The appropriate informal conference letter shall be sent with each copy of the citation.

**d. Complying with Citation and Notification of Penalty.** If the employer does not contest the citation and the penalty, and it becomes a final order, then:

- (1) The cited conditions must be abated by the dates set in the citation, and
- (2) The penalty must be paid if one was proposed.

**e. Informal Conference.** The CSHO shall advise those attending the closing conference:

- (1) That a request for an informal conference with the Regional Director is available upon request. The informal conference provides an opportunity to:
  - (a) Resolve disputed citations and penalties without the necessity of recourse to the contest litigation process which can be time-consuming and expensive;

**E.2.e.1.**

- (b) Obtain a more complete understanding of the specific safety health standards which apply;
  - (c) Discuss ways to correct the apparent violations;
  - (d) Discuss questions concerning proposed penalties;
  - (e) Discuss problems with proposed abatement dates;
  - (f) Discuss problems concerning employee safety and health practices;
  - (g) Learn more about other VOSH program projects and services available; and
  - (h) Obtain answers to other questions.
- (2) That, if a citation is issued, an informal conference or the request for one does not extend the 15-working-day period in which the employer or the employee representative may contest.
- (3) That an oral statement of disagreement or intent to contest a citation, penalty or abatement date during an informal conference will not take the place of the required written notice of intent to contest.
- (4) That the employer and employee representative(s) each have the right to participate in any informal conference or negotiations between the Compliance Manager and the employer or employees in accordance with the guidelines.

**f. Contesting Citation and Notification of Penalty.** The CSHO shall advise the employer that the citation, the penalty and the abatement date may be contested if, in good faith, the employer does **NOT** agree to the citation, penalty or abatement date.

- (1) **Notice of Contest.** The CSHO shall tell the employer that, in order to contest, the Regional Office must be notified in writing within 15 working days after receipt of the citation and notification of penalty. (Working days are Monday through Friday, excluding State holidays.) It shall be emphasized that a notice of intent to contest given orally will not satisfy the requirement to give written notification.

*NOTE: The written notification must be postmarked no later than the 15th working day after receipt of the citation; otherwise, the citation has become a final order.*

**E.2.f.(1)**

**(a) Employer Contest.** This written notification, called a Notice of Intent to Contest, must clearly state what is being contested--which item of the citation, the penalty, the correction date, or any combination. The CSHO shall ask the employer to read the pamphlet accompanying the citation for additional details.

**1** If the employer wishes a later abatement date only and there is a valid reason, the Compliance Manager should be contacted. The Compliance Manager may issue an amended citation changing an abatement date prior to the expiration of the 15-working day period without the employer's filing a contest.

**2** If the employer contests just the penalty or only some of the citation items, all uncontested items must still be abated by the dates indicated on the citation and the corresponding penalties paid within 15 days of notification.

**(b) Employee Contest.** The CSHO shall indicate that the law provides that employees or their authorized representative(s) have the right to contest in writing any or all of the abatement dates set for a violation if they believe the date(s) to be unreasonable.

**(2) Contest Process.** The CSHO shall explain that the Notice of Intent to Contest is properly filed, when it is received in the regional office and postmarked as indicated. If settlement is not reached, VOSH will forward the case to the Commonwealth's Attorney for the jurisdiction where the violation occurred, and after a bill of complaint has been filed, the Circuit Court shall promptly set the matter for a hearing.

**(a)** Upon receipt of the Notice of Intent to Contest, the Compliance Manager shall notify the Commonwealth's Attorney, and the Office of Legal Support, immediately.

**E.2.f.2.**

- (b)** An employer or employee or employee representative with party status, pursuant to § 40.1-49.4.E., *Code of Virginia*, may be represented by a person who is not an attorney.
  - (c)** The Circuit Court shall hear the case and issue a written order affirming, modifying, or vacating the Commissioner's citation or proposed penalty, or directing other appropriate relief.
- g. Penalties.** The CSHO shall explain that penalties must be paid within 15 working days after the citation and penalty become a final order of the Commissioner. If, however, the employer contests the citation or the penalty in good faith, the penalties need not be paid for those items contested until a final decision is made.
- h. Abatement Action.** The CSHO shall explain the following:

  - (1)** For violations that the employer does not contest, the employer is expected to notify the Compliance Manager promptly by letter that the cited conditions have been corrected by the abatement date set in the citation.
  - (2)** Section 307.D. of the *Administrative Regulations Manual* mandates that the employer must certify that each cited violation has been abated within 10 calendar days of the abatement date. Failure to certify abatement can result in a penalty of \$1,000 over and above the penalties already assessed in the citation.
  - (3)** Abatement actions must be supported by documentation as required in § 307.D.3 that is specific in how conditions were corrected.
  - (4)** Failure to certify abatement may also trigger a follow-up inspection.
- i. Follow-up Inspection.** The CSHO shall explain that:

  - (1)** If the employer receives a citation, a follow-up inspection may be conducted to verify that the employer has:

**E.2.i.(1)**

- (a)** Posted the citation as required;
  - (b)** Corrected the violations as required in the citation;
  - (c)** Adequately protected the employees during multi-step or lengthy abatement periods;
  - (d)** Taken appropriate administrative or engineering abatement steps in a timely manner;
- (2)** The employer also has a continuing responsibility to comply with the law. Any new violations discovered during a follow-up inspection will be cited.
- j. Failure to Abate.** The CSHO shall explain that to achieve abatement by the date set forth in the citation, it is important that corrective efforts be promptly initiated. The employer shall be reminded that, under § 40.1-49.4.I, *Code of Virginia*, additional penalties of up to \$7,000 per day per violation may be proposed if the employer is found during a follow-up inspection to have failed to abate, by the time required on the citation, any violations which have not been contested.
- k. False Information.** The CSHO shall explain that, if the employer knowingly provides false information in writing, relating to efforts to correct cited conditions or in records required to be maintained, criminal penalties are specified in § 40.1-51.4:2, *Code of Virginia*.
- l. Employee Discrimination.** The CSHO shall emphasize that the law prohibits employers from discharging or discriminating in any way against an employee who had exercised any right under the law, including the right to make safety or health complaints or to request a VOSH inspection. Complaints from employees who believe they have been discriminated against will be evaluated by the Department. If the investigation discloses a probable violation of employee rights, the Department may initiate legal action on behalf of employees whose rights have been violated.
- m. Variance.** The CSHO shall explain that the law permits the employer to apply to VOSH for a temporary variance from a newly promulgated standard if the employer is unable to comply by the effective date due to the unavailability of materials, equipment, or technical personnel.



The employer may apply for a permanent variance from a standard if the employer believes that the facilities or methods of operation at the establishments under consideration are at least as safe and healthful as would be ensured by the VOSH standard. All variance applications must be submitted in writing and must include all applicable items specified in Sections 200 and 210 of the *Administrative Regulations Manual*. More complete information on variances may be obtained from the Program Director.

Finally, an employer may apply for an interim order from the Commissioner, granting a variance until final action can be taken by the Commissioner on a permanent variance request. Interim orders can also be used for emergency or short notice work situations where there is no time to complete the full notice and comment procedures required for a regular variance.

**E.2. n. Reserved.**

- o. *De Minimis* Violations.** The CSHO shall discuss all conditions noted during the walkaround considered to be *de minimis*, indicating that such conditions are subject to review by the Compliance Manager in the same manner as apparent violations but, if finally classified as *de minimis*, will not be included on the citation.

In addition, the CSHO shall explain to the employer and the employee representatives that a condition is considered to be *de minimis* when:

- \* It has no direct or immediate relationship to employee safety and health;
- \* It is apparent that the employer is complying with the clear intent of the standard but deviates in a minor, technical or trivial way; or
- \* An employer's workplace is "state of the art" which is technically beyond the requirements of the applicable standard and provides equivalent or more effective employee safety or health protection.

Employer comments shall be noted on the VOSH-1B.

- E.2.**
- p. Referral Inspection.** When applicable, the CSHO shall explain that apparent serious violations which have been observed during the inspection, but which are not within the scope of the CSHO's expertise, will be subject to referral to the Compliance Manager, and, as a result, additional inspections may be scheduled at a later date.
  - q. Trade Secrets.** The CSHO will allow the employer, in accordance with § 250 of the *Administrative Regulations Manual*, to review information gathered from trade secret areas and identify that information which contains or may reveal a trade secret. The employer will be asked to explain the reasons for identifying information as a trade secret.
  - r. Consultative Services.** The CSHO shall thoroughly describe the on-site consultation project as follows:

    - (1)** Priority is directed at small businesses (250 or fewer employees) in high hazard industries;
    - (2)** At no cost to the employer, and without citations or penalties, it provides off-site and on-site assistance including hazard surveys, assistance with correction of cited and uncited hazards, assistance with the employer's safety and health program, and training;
    - (3)** The consultation safeguards trade secrets;
    - (4)** It provides case file information to VOSH/OSHA only if the employer does not correct serious hazards or, at the employer's request; and
    - (5)** The availability and scheduling of such services may be limited because of high demand.
  - s. Other Agency Services and Programs.** The CSHO shall briefly explain the various other services and programs currently in effect in the agency and shall provide copies of program descriptions to any interested employer. Examples are the following:

    - (1) Employer Abatement Assistance.** The employer shall be made aware in greater detail of VOSH's commitment to aid as much as possible in the process of correcting workplace hazards. Any questions regarding abatement can be discussed with the employer during the closing conference with more complete information provided as necessary as soon as possible after the completion of the inspection.

**E.2.s.**

- (2) Training and Education Programs.** The CSHO shall inform the employer of the training and education programs that are available through the Department (Safety and Health), the OSHA Training Institute and its outreach programs.